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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. AJANI JAMAL AMOS, Defendant and Appellant.	F040997 (Super. Ct. No. HC007462A) **O P I N I O N**

APPEAL from a judgment of the Superior Court of Kern County. Roger D. Randall, Judge.

Waldemar D. Halka, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, Jeffrey D. Firestone and Michelle L. West, Deputy Attorneys General, for Plaintiff and Respondent.

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After unsuccessfully moving to suppress evidence, appellant Ajani Jamal Amos pleaded no contest to possession of cocaine base for sale in exchange for a sentence of no more than six years in prison. In addition, appellant admitted he had previously been convicted, in 1998, of conspiracy to commit assault with a firearm, but he reserved the right to contest the conviction's validity as a prior strike.

Before entering the plea in this case, appellant sought, by writ of coram nobis,[1] to set aside the 1998 conviction on the ground he had then pled no contest to the offense based upon his counsel's representation that in the future the offense would not be deemed a "strike" under California's Three Strikes Law (the Law). (Pen. Code, §§ 667, subd. (b)-(j), 1192.7, subd. (c) (1998 version).)[2] When appellant pled in 1998, conspiracy to commit assault with a firearm was not a "serious felony" or "strike" under the Law but, sometime after that 1998 conviction became final, California voters passed Proposition 21 (Cal. Const., art II, § 8, subd. (d), eff. March 8, 2000), which added conspiracy to commit assault with a firearm to the Law as a strike prior. (§ 1192.7, subd. (c) (31) & (41), as amended by Proposition 21, the Gang Violence and Juvenile Crime Prevention Initiative, Ballot Pamp., Primary Elec. (Mar. 7, 2000).) Appellant's coram nobis petition was denied.

At sentencing in the present case, the trial court refused to relitigate the issues raised in the coram nobis petition and refused to strike the prior 1998 conviction pursuant to section 1385. The court sentenced appellant to six years in prison -- the lower term of three years for possession of cocaine base for sale doubled as a result of the strike.

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1 The petition was titled "Writ of Error Coram Nobis, or In the Alternative, for Writ of Habeas Corpus." The trial court issued an order to show cause on the writ of coram nobis, and treated the petition as one for coram nobis. On appeal, appellant asks that we review the order as one denying a petition for coram nobis. We will.

2 All further references are to the Penal Code.

This is appellant's appeal from the order denying his petition for writ of coram nobis.

DISCUSSION

The trial court did not abuse its discretion in denying appellant's petition for writ of coram nobis. (*People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 192 [appellate court reviews a trial court's denial of a petition for writ of error coram nobis for abuse of discretion].)

The mistake alleged by appellant in his petition -- that the 1998 offense to which he pled would not constitute a strike in the future -- concerned a legal issue not a factual or evidentiary issue. A legal issue cannot be remedied by coram nobis. (*People v. Ibanez* (1999) 76 Cal.App.4th 537 [defendant's ignorance of potential for civil commitment under the Sexually Violent Predators Act is a legal question which cannot be remedied by coram nobis]; *People v. Sharp* (1958) 157 Cal.App.2d 205, 207 [writ of coram nobis lies to correct errors of fact as distinguished from errors of law]; *People v. Moore* (1935) 9 Cal.App.2d 251, 252-253 [a coram nobis petition cannot be used to correct legal error].) Thus, though a petition for coram nobis is an appropriate procedure for a postjudgment challenge to a guilty plea allegedly induced by mistake, fraud, or coercion (*People v. Wadkins* (1965) 63 Cal.2d 110, 113), it cannot reach mistakes of law.

Moreover, even if it is assumed that the alleged mistake relied upon by appellant was one of fact, appellant was still not entitled to coram nobis relief. The purpose of the writ is to bring factual errors or omissions to the court's attention. (*People v. Dubon* (2001) 90 Cal.App.4th 944, 950.) Coram nobis is proper when the petitioner shows that: (1) some fact *existed* which, without fault of his own, was not presented to the court at trial on the merits and which, if presented, would have prevented the rendition of judgment; (2) the fact did not go to the merits of the issues tried; and (3) the fact was not known to, and could not in the exercise of due diligence have been discovered by, the

petitioner at any time substantially earlier than the date of the petition. (*People v. Castaneda* (1995) 37 Cal.App.4th 1612, 1618.)

Here, appellant in 1998 pled to an offense that was then not a strike under the express language of the existing Law and there was no case authority which suggested it might be considered a strike despite the express language of the existing Law. Consequently, no fact *existed* at the time judgment was entered in 1998 which would have prevented the judgment had it been known, and appellant could not have been misled or mistaken as to the true state of the Law because the information relayed to appellant by his counsel and by the trial court was a correct summation of the relevant Law then prevailing.

The fact that the offense was later made a strike with the passage of Proposition 21 did not require issuance of coram nobis. (*People v. Gilbert* (1944) 25 Cal.2d 422, 438 [hope or belief not founded on a false or fraudulent representation or promise by a responsible officer does not constitute extrinsic fraud or denial of due process].) Modifications of law, by statute or by judicial opinion, are inevitable and for the most part unpredictable. Here, the trial could rationally have found that there had been no false or fraudulent representation or promise made to appellant in 1998 with respect to any future change in the Law, and, even if such a representation or promise had been made, appellant would have been unreasonable as a matter of law to rely upon it.[3]

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[3] The attorney who represented appellant in 1998 testified she "assured" him that she did not believe the offense would become a strike. She said she did not "promise" him it would never become a strike in the future. She said "I was fairly sure that a 182 [conspiracy] would not be considered by the courts as being in the strike range. And, my feelings at the time were pretty assured that it would not become a strike. I did not consider the legislature making it a strike. I was thinking about the courts turning it into a strike. And I didn't see that the ramifications around a conspiracy would allow the courts to do that. So, I assured him. But I didn't promise." The only representations made on the record by the trial court and the prosecution were that the offense was not then a strike offense.

The record supports a conclusion by the trial court that appellant's plea was based upon representations that conspiracy to commit assault with a firearm was not a strike under, and was not likely to be characterized as a strike by judicial interpretation of, the Law as it was then written. In fact, the clear point of the discussions among the trial court and counsel at the time of appellant's plea was that appellant would plead to a crime that would not be deemed in the future to be a strike under the provisions of the Law as it then stood, because the Law did not include conspiracies within the definition of a strike prior.[4]

Appellant was not denied the benefit of his bargain. (See *People v. Wadkins, supra,* 63 Cal.2d 110, 115 [defendant may have read more into the alleged promise than was indicated]; *People v. Gilbert, supra,* 25 Cal.2d at p. 443 [defendant's reliance must be in good faith and without negligence on his part]; see also *People v. O'Neal* (1962) 204 Cal.App.2d 707, 708-709 [claim that the police had assured the defendant he would receive a county jail sentence rejected because the "exceptional remedy to set aside a judgment exists only where a strong and convincing showing of the deprivation of rights by extrinsic causes is made"]; *Mendez v. Superior Court* (2001) 87 Cal.App.4th 791 [no remedy where defendant claims he would not have pled guilty if he could have impeached police officer with felony conviction which occurred after judgment entered -- judgment is presumed valid in face of guilty plea which admits every element of offense].)

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[4] When the prosecutor stated the crime as an "assault with a deadly weapon, a firearm," appellant's defense counsel responded that she was "not too sure if it is worded that way if it doesn't become a strike, your Honor. That was one of the reasons I was thinking that conspiracy . . . which does not -- which is not a strike. It carries the same amount of time." To this the court said: "You mean 245 [assault] conspiracy (a)(2)?" Defense counsel replied "yes," and the prosecutor added "That's fine." The court then accepted appellant's plea to the conspiracy offense.

Disposition

The order denying the writ of coram nobis is affirmed.

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Dibiaso, Acting P.J.

WE CONCUR:

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Vartabedian, J.

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Cornell, J.